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Senate

The Senate met at 2 p.m. and was called to order by the President pro tempore (Mr. STEVENS).

PRAYER

The Chaplain, Dr. Barry C. Black, offered the following prayer:

Let us pray.

O God, You reveal Yourself in the glory of the heavens and in the whisper of conscience. Make us aware of Your presence as this day unfolds. Grant that this knowledge of Your involvement in our day will influence our thoughts, words, and deeds. Help us to focus on serving and pleasing You, as You lift us above suspicions and fears. Sustain our lawmakers in their important work. Remind them that to do something well usually requires the patience to not hurry the process. Remove perplexities and give them Your peace. Open their minds to the counsels of Your eternal wisdom. Increase in us all a hunger and thirst for righteousness.

We pray in Your Holy Name. Amen.

PLEDGE OF ALLEGIANCE

The President pro tempore led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

RESERVATION OF LEADER TIME

The PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

MORNING BUSINESS

The PRESIDENT pro tempore. Under the previous order, there will be a period for the transaction of morning business.

RECOGNITION OF THE MAJORITY LEADER

The PRESIDENT pro tempore. The majority leader is recognized.

SCHEDULE

Mr. FRIST. Mr. President, today we are returning to session in order to conclude our work for the first session of the 109th Congress. I want to welcome everybody back after a couple of weeks where people have been with constituents and people have been working very hard to bring to conclusion many of the issues that were left unfinished a couple of weeks ago. Real progress has been made over the course of the last 2 weeks. Over the course of this past weekend, a lot of work has been done. As I mentioned prior to Thanksgiving, we will be working today and tomorrow on a number of issues. However, the first rollcall vote will be on Wednesday morning.

Many of our colleagues have asked about the schedule for this week, this weekend, as well as next week. As things unfold and as my discussions with the Democratic leader continue, we will be forthcoming to let people know exactly what we expect. We would like to finish up our work as quickly as possible prior to the Christmas holiday. However, everyone does need to be prepared to stay as long as necessary to finish the work that is before us.

Today, we expect to reach an agreement on several motions to instruct the conferees on the deficit reduction bill that is at the desk. We would have those motions debated tomorrow, on Tuesday, and on Wednesday, with votes to occur or begin to occur Wednesday morning.

We also expect to debate the Bahrain Free Trade Agreement during tomorrow's session under a short time agreement.

The PATRIOT Act conference report will arrive in the Senate sometime this

week, and we will proceed to that conference report when it is available.

Chairman WARNER has completed work on the Defense authorization conference report, and that may also be around here midweek.

We also need to complete the appropriations process by taking up and taking action on the final 2 conference reports. This week we need to act on the Labor-HHS appropriations as well as the Defense Appropriations Committee reports.

I mentioned reconciliation. A lot of work has been done over the course of the last several weeks among the various committees. I want to continue to encourage all chairmen to aggressively work with their House counterparts on this important reconciliation bill. Clearly, a lot of work remains, but with the cooperation and patience of all Members, I believe we can get our work done and adjourn in a timely way. It is going to be up to each and every one of us to decide when we will be able to finish our business and adjourn this session. Senators will need to keep their schedules flexible over the course of this week and I believe we can finish everything this week. If not, we would have to continue into next week—or this week and this weekend, and if not, we would have to continue into the early part of next week, but we should be able to complete everything this week. Again, everybody, please keep your schedules flexible.

I do want to thank all Senators in advance for their help as we schedule these final days.

I yield the floor.

FILIBUSTERING

Mr. BYRD. Mr. President, will the distinguished majority leader yield?

Mr. FRIST. I am happy to.

Mr. BYRD. I want to congratulate the majority leader on helping to get these appropriations bills all passed. We discussed this, he and I, several

• This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.



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months ago. It was my hope then that the leader would help to get all the bills passed so that we would not have an omnibus bill. He indicated he was going to try to do that, and he has tried and I want to congratulate him. I want to thank him for that.

I think we ought to always pass these appropriations bills. The distinguished Presiding Officer, when he was chairman, got all the bills out of the committee; Senator STEVENS got all the appropriations bills out of the committee. He was the chairman of the committee, I believe, at that point, the Appropriations Committee. I was the ranking member. I complimented him then. I compliment the distinguished majority leader and Senator THAD COCHRAN on getting this done. I compliment him.

While I am complimenting the Senator, I want to ask the Senator a question, and I do it with great respect. I respect the Senator from Tennessee. He is a great physician. And every night I pray to the Great Physician and the Senator from Tennessee is following in the footsteps of that Great Physician.

But I have a question. I saw something which concerned me in the paper this morning, the Washington Post. The Washington Post had the good judgment to place this in a very visible place in the Post. It is a great newspaper. Page A5. Here are the headlines that bothered me:

Frist Cautions Senators Against Stalling Alito Vote.

And then the subheadline:

Democrats Don't Plan Filibuster.

The first paragraph says:

Senate majority leader Bill Frist, Republican, Tennessee, threatened—

That is a bad word, "threatened"—yesterday, to strip Democrats of the power to filibuster. . . .

I am a Democrat, and it has never been my desire to strip Republicans of their power to filibuster. I was here—I believe the first election I cast a vote in was 1936. I think I was old enough to vote then. I would have been 20 years old in that session of Congress, which met in January 1937.

I believe there were only 16 Republicans in the Senate at that time. The Senate only had 96 Members then. It didn't have 100 but 96 Members. There were only 16 Republicans and there were 4 independents—former and later, et cetera—and there were 76 Democrats. Can you imagine that? Yet there was never any threat on the part of the Democrats in 1936. I think that was the first time I cast a vote, and I was proud of that Democratic Congress. I don't think there was any threat on the part of Republicans to kill the filibuster, to kill the provisions in Senate rule XXII that allowed freedom of speech in the Senate. When I saw this a few months back, we had this wave of insaneness. That swept over the Senate. We were talking about the nuclear option, so-called constitutional option. There is nothing in the Constitution about it. It is an unconstitutional option.

I was sorry to see that my friend, Senator FRIST, this fine Senator from Tennessee, the majority leader of the Senate and a great physician, was threatening—this is what the newspaper said—"threatened yesterday to strip Democrats of the power to filibuster if they blocked the vote on Supreme Court nominee Samuel A. Alito, Jr."

That nominee came in to see me a while back. I had a nice talk with him. I was much impressed by Judge Alito. I haven't made up my mind yet. But I liked what he said when he was in my office, and I might vote for him. I don't know yet.

But I have not heard a Democrat use the word "filibuster" in connection with this nomination. I haven't heard anybody use that word "filibuster." It was news to me that the distinguished majority leader was talking about a threat of stripping Democrats of the power to filibuster if they block the vote on Supreme Court nominee Samuel A. Alito, Jr.

Just one more minute, and then I will yield to the distinguished leader.

This is my 47th year in the Senate. I will finish the 47th year this month. And I never dreamed that during my tenure in the Senate—I didn't know how long the tenure would be at that time—there would be any effort to undermine, or to terminate, or to threaten the freedom of speech in the Senate. That is a freedom that goes back to the Magna Carta in 1215, and then in the reign of Henry IV. He reigned in England during the years 1399 to 1413. And during his tenure he proclaimed that the members of the House of Commons had a perfect right to speak their minds. So there was freedom of speech in the English House of Commons under Henry IV.

Then when the Declaration of Rights came along in 1689, before the Commons would crown the two sovereigns, William and Mary, as King and Queen in England, they exacted from those two individuals a promise that they would honor the rights of Englishmen, the rights of people in the House of Commons, to speak their minds. That was on February 13, 1689. Then on December 16, 1689, they wrote that into the law. That became a statute in the Bill of Rights.

In the United States, our forefathers drew those provisions from the English Bill of Rights into our own Bill of Rights 100 years later, in 1789.

So I am greatly disturbed when any majority leader, a Senator as powerful as the distinguished Senator from Tennessee—as I have been majority leader, I know the power of a majority leader—but I would never, I say this with respect to the distinguished Senator—and when we were in power, the Democrats, as I say, when Republicans only had 16 Members here, the Democrats could easily have killed freedom of speech in the Senate and not allowed the Republicans to filibuster. But there was never any thought of it.

That is not a great idea. It didn't take a fellow to fall off a turnip truck to think of that. There is nothing brilliant about saying if there is a filibuster, all we need is the might and power of the majority to vote the rules are wrong and interpret them differently. And it could be done; no doubt about it. We could do that. But the Democrats never—and no party in history, Republicans or Democrats—threatened to deny freedom of speech to members of the minority. I daresay a lot of Members on that side of the aisle, the Republican side of the aisle, don't like that idea. I don't think they would agree with that because they have a right to filibuster, too. The Republicans do. I respect that right.

I am sorry I read that by the Senator. I will read it once more.

Senate majority leader Bill Frist, Republican of Tennessee, threatened yesterday to strip Democrats of the power to filibuster if they block the vote on Supreme Court nominee Samuel A. Alito, Jr.

I haven't heard any Democrat talk about that. As a matter of fact, I think we are going to have a vote on him. We will debate it. We certainly have a right to debate. I joined the group of 14 so there wouldn't be filibusters against these judgeships, except in extreme cases when I might join a filibuster, too. But may I say most respectfully to the distinguished leader, I hope we will quit talk about this so-called "nuclear option." That is a threat to the freedom of speech, freedom of speech, freedom of speech, here in the Senate.

I yield to the distinguished Senator, the leader whom I do respect.

The PRESIDENT pro tempore. The majority leader is recognized.

Mr. FRIST. Thank you, Mr. President.

Let me take a look at the article. I haven't read the Washington Post today. But I appreciate my good friend and colleague bringing this to my attention.

The Senator is right. It says, "Frist cautions Senators against stalling Alito vote."

It is pretty accurate. And I guess the Senator's followup statement is that no Democrat is talking about filibuster, and here you have the majority leader of this body saying if there is a filibuster he is going to ask for an up-or-down vote consistent with giving advice and consent. There are lots of ways of giving advice and consent. But I know the distinguished colleague from West Virginia has been focused on lots of things going on.

But let me better inform him about what the other headlines have been saying about what Democrats are thinking and doing—the allegation that no Democrats are thinking about filibuster, citing headlines.

It is a pretty accurate article, actually, as I glance through it.

Associated Press, November 1, 2005.

These are just some other headlines that are out there.

Republicans Enthusiastic About Alito While Democrats Are Wondering Whether To Filibuster.

That is November 1.

Headline in the Bergen County, New Jersey Record: "Democrats Mull Possible Filibuster," November 21.

Boston Globe, November 4, 2005: "Democrats Won't Rule Out Filibuster."

The Hill, which we all see several times a week, November 1: "Dems Hint At Filibuster."

The Washington Times, November 3: "Senators to Weigh 'Circumstances' for a Filibuster."

And the International Herald Tribune, other headlines: "Democrats Don't Rule Out Filibuster To Block Nominee."

Those are some of the other headlines that at least cause the leader on this side of the aisle to say—not just this majority leader, not just Chris Wallace. He asked the question, if a filibuster is conducted, you can see all around the country—whether it is up in New Jersey, in Boston, MA, or right here on the Hill—there must be some Democrats thinking, at least thinking, contemplating, how we can use a tool we use.

I would argue, and I know there is a difference of opinion, unfairly, against not just one nominee or two or three but four, five, six, seven, eight, nine, 10 times in the last 3 years Presidential nominees who had gone through committee, come to the Senate, filibustered again and again and again—used as a regular tool. That is wrong.

Therefore, I believe in the principle of an up-or-down vote. If someone is nominated by the President and has the highest qualifications according to the American Bar Association, with advice and consent under the Constitution, they have gone through the committee, come from the committee and were recommended to this Senate, I believe in that principle of an up-or-down vote.

Those are the various headlines. The response would be, but those are the headlines and headlines are like these headlines in here, some headline writer writes it. Clearly, Democrats are thinking about it.

What about individuals?

Senator REID himself said Democrats would consider all filibusters and a filibuster to Alito is possible.

From November 1, the Boston Globe: Senate Minority Leader Harry Reid pledged that Democrats will consider all options at their disposal if they decide to stop Alito's nomination. Though Reid said Democrats will wait for confirmation hearings before choosing their strategy, he noted that Bush is 'near the bottom of his popularity' in opinion polls and that a filibuster to defeat Alito is possible.

The Democrat leader, talking about a filibuster being possible, so an accusation that this leader is the one initiating discussion about filibuster is wrong.

I continue with Reid spokesman Jim Manley on Alito:

All procedural options are on the table.

Our colleague, CHARLES SCHUMER, from New York:

Nothing is on the table, and nothing is off the table.

Senator BARBARA BOXER from California:

The filibuster's on the table.

These are all quotations, from Republicans enthusiastic about Alito and Democrats wonder whether to filibuster.

The Associated Press, November 1, Senator BOXER:

The filibuster's on the table.

Senator TOM HARKIN not only believes there will be a filibuster but relishes the prospect—that is not a quotation; this is sort of a point taken from the quotation from an article in the Baltimore Sun November 2.

Senator TOM HARKIN, Iowa, Democrat said:

I believe Democrats will filibuster this nominee on the basis that he's way too ideologically to the right. We need a moderate on the court, not an avowed rightwinger like him that would upset the balance.

These are from your side of the aisle. I know my distinguished colleague is not aware of these, but that comes to me.

Senator DICK DURBIN to CBC's Jan Crawford Greenberg:

Are you refusing to rule that filibuster out now? Do you think that's still likely or is it just highly unlikely?

Senator DURBIN responds:

Let's complete the hearing in January, then make a decision whether we should go forward with the nomination of Judge Alito.

That was November 6.

Senator BIDEN on November 17, from the Congress Daily AM:

As Democrats stepped up questioning of Samuel Alito's Supreme Court nomination, Sen. Joseph Biden, D-Del., warned the nominee Wednesday he might need Biden's vote on a potential filibuster if the judge is not forthright during hearings . . . I told him you probably don't need my vote to get on the bench, Biden continues, but if you are disingenuous in the hearings, you may need my vote relating to a filibuster.

Senator RUSS FEINGOLD—again, to show it is not just one or two or three or four, said it was perfectly fine to use a filibuster. Those are Senator FEINGOLD's words on ABC's This Week.

I think it's perfectly fine to use a filibuster if somebody is clearly unacceptable. That is an option we have. It has almost never been used with regard to a Supreme Court justice, so it takes an extreme case, but I was the one Democrat who was unhappy publicly with the sort of deal that was made earlier in the year that kind of let certain judges go through that shouldn't have gone through. The right to filibuster is part of our role in the Senate, and we should reserve the right but use it only very sparingly.

After meeting with Judge Alito, Senator TIM JOHNSON basically refused to rule out supporting a filibuster.

I will leave all those options on the table.

That is a sampling of what I hear directly from the Senate. As my distinguished colleague from West Virginia knows, all these outside groups complicate matters on both sides. We have the sort of party activist and liberal in-

terest groups. We have the DNC Chairman Howard Dean saying the following, from Reuters, November 13:

Despite early signals to the contrary, U.S. Senate Democrats must keep open the option of blocking a confirmation vote on U.S. Supreme Court nominee Samuel Alito, Democratic Party leader Howard Dean said on Sunday . . . Dean, asked if Democrats should keep the possibility of a filibuster on the table, said, 'Absolutely. Of course we should.'

My response in large part is there is a lot of talk about filibuster out there. If the filibuster is going to be threatened by Democrats on a man such as Judge Alito who does have that modest temperament, who has been confirmed by this body two times, who has been involved with 2,500 cases before, has written 200 opinions, who my distinguished colleagues have had the chance to meet with, I have had the chance to meet with, has the sort of temperament where he will not be legislating from the bench, he deserves a vote in the Senate. Vote him up, vote him down, if that is the way Members feel, but he deserves a vote in the Senate.

I don't think it will come to a filibuster. I don't want it to come to a filibuster. I haven't even brought the filibuster up except in response to a question on television on one of the Sunday shows, but I did make it clear at the Republican conference that I strongly believe a man of the quality of Sam Alito simply deserves the respect, the dignity of having a vote in this Senate. Everyone can vote the way they want to. Again, it will be overwhelming by the time we finish this process. That will be, I believe, before January 20, at some point.

I don't want to posture on this. This is not a Democratic or Republican issue. This is an American issue. It is an issue that reflects on this Senate because it is our unique responsibility.

I am absolutely confident in large part because of the challenges we have gone through for the last 2½ years in talking about filibuster and having it not used very rarely. We are not talking about filibustering legislation where you can come in and modify and go to conference and have all these procedural tools. We are talking about the dignity of giving up-or-down votes in the Senate. It has been tough.

As the distinguished former majority leader knows, it has been very tough the last 3 years working through this process, where for 214 years, for judicial nominees coming from the executive branch, coming from the President of the United States, coming here is the tool of a filibuster being used routinely, 10 times—10 times—in the last 3 years, where for the 214 years before that, rare, rare, rare, rare.

So I feel we are back on course today. I do not think we will see a filibuster. I do not think people really want a filibuster. I think there is a lot of posturing there. But I will do everything I possibly can. If your side chooses, if the Democrat side chooses to filibuster, chooses to obstruct, chooses to

stop this Nation's business, I will use all the tools. If they pull that sheath out, if the other side pulls that sheath out, I will use all the tools I have to simply get an up-or-down vote on the floor of the Senate for the President's judicial nominees.

Mr. BYRD. Mr. President, will the Senator yield?

Mr. FRIST. Yes.

The PRESIDING OFFICER (Mr. THOMAS). The Senator from West Virginia.

Mr. BYRD. I am sorry to hear the distinguished majority leader say what he just said. In the first place, I hear no talk of a filibuster. But who knows? If something should come up that we have not seen heretofore or have not heard heretofore about the nominee, which is entirely possible—not probable, I don't think—if that should happen, I can understand how Senators would say they are not going to give up the right to filibuster in such an event. I do not foresee that. The threat itself is a threat against freedom of speech.

Now, the distinguished Senator from Tennessee is a great physician. But this is the Senate. And the Senator talks about our forefathers. Our forefathers did not deign to stoop to a King or a President. And this Senate is a forum, probably the only forum that is left in this country, where freedom of speech reigns. That is the purpose of this Senate. That is why we have a Senate. I would hope that the distinguished Senator, who is a distinguished physician, would not have it on his escutcheon that he threatened freedom of speech in the Senate and threatened the filibuster.

The filibuster has been around a long time. It has a bad name in some instances, but filibusters have sometimes been the tool by which free men and women in this Senate have exercised their right to oppose something. And I detest this mention of a nuclear option, the constitutional option. There is nothing constitutional about it, nothing. Nothing constitutional about that.

Freedom of speech is underwritten in the Constitution and the Bill of Rights—freedom of speech—and that also includes the Senate. Freedom of speech, we have always had freedom of speech in the Senate. And as I say, any person who fell off a turnip truck could think of the idea: Well, if we have enough numbers, if we just go against the rules and throw reason to the winds, we can stop a filibuster. We can take that away from the Democrats. How terrible that would be.

I hope I will never hear the Senator from Tennessee say this again. He is a Senator, and the right of freedom of speech is his as the majority leader, and he should embrace that right with the intention to die if necessary if anyone sought to take that freedom of speech away from the Senate.

We are here as emissaries of the people who send us here. And the people out there in West Virginia, they cannot

speak on this Senate floor. Young people out there in West Virginia or in Tennessee cannot speak on this Senate floor. But their representatives in the Senate—I am one of those—have a right to speak as long as I can stand on my feet. And I will do it.

Now, I am not threatening a filibuster. But I have filibustered in the past. And I would do so again. I will say to the distinguished Senator, I have been in the Senate 47 years. Now, I will guarantee the Senate, if we ever have that—I would suggest the Senator not even use the threat again. I do not mean to be lecturing the Senator of what he can and cannot do. He can do that. He has freedom of speech, as I have. He can threaten anything he wants. He is the majority leader. And he may have the power to carry it off. But he might not have.

Now, I will guarantee you one thing, I say, Mr. Leader, when somebody tries to kill freedom of speech in the Senate, they are going to have the American people to deal with—the American people. That is what our Constitution is all about: freedom of speech, freedom of the press, freedom of religion. And freedom of speech obtains here in the Senate, always has for 218 years.

And I tell you, my friend, here is one Senator who is not going to be threatened and is not going to be persuaded by any threat against freedom of speech. I will die for that right. Our forefathers died for it. Our British forefathers died for it. And they fought for hundreds of years against tyrannical monarchs so that the right of freedom of speech, control of the purse, and such things, would be there in the House of Commons.

I am so sorry. I have been here, I have served under several majority leaders, Republican and Democrat. Not once did any of them ever threaten to kill freedom of speech in the Senate. And I hope the Senator will think twice, three times, before he ever threatens that again. There is not going to be any filibuster against Alito.

Mr. FRIST. Good. Good.

Mr. BYRD. And I am against any filibuster. That is why I joined the 14. We stopped it. I thought we were past that. I hope the Senator will forgive me. I do not mean disrespect to him, but he is talking about freedom of speech. I respect the Senator. But I respect the Senate more, and I respect the Constitution and I respect freedom of speech more. And that is why I was so interested in knowing why the Senator was talking about killing the filibuster and killing freedom of speech and killing a Senate rule. We have ways of changing the rules. If we do not like the rules, there is a way, under the rules, that one can change them. But never has anybody threatened to stop this constitutional right to freedom of speech. I detest it. And I want the Senator to know, if he ever really tries to pull that tool—and he can do so; he is the leader, he has a right, if he wants

to do that, but I will tell you one thing. This will not make a Senator's name in history. It will not be etched in stone. Future generations will not rise up to bless a Senator who tries to destroy freedom of speech in the Senate.

I say this with great respect to the Senator. I will tell you, he is a physician. I am not. He can do things I cannot do with a knife. He has saved many lives, I am sure. And I praise him for that. I know he goes out and serves the people. Even as a Senator, he goes out there and uses that fine brain of his in helping people. But for God's sake, this is the Senate. I have been here 47 years. I did not come here to see freedom of speech curtailed in this Senate. And when there is an effort to curtail it, they have ROBERT C. BYRD and a whole group of persons on both sides of the aisle—I would say there are Republicans in here who would not stand for that.

I have said enough. I do not intend to carry this on. But I am glad we had an opportunity to discuss this because I hope the Senator from Tennessee fully understands that is not to be talked about in this Senate. Republicans do not like it either. And there have been fine Republican leaders. Howard Baker, a former Republican leader, was a real statesman. The Panama Canal treaties would not have been approved by this Senate had it not been for Howard Baker. And those Senators—Bob Dole, others, Everett Dirksen—my goodness, they never threatened freedom of speech in the Senate.

Republicans as well as Democrats have seen the wisdom of being able to filibuster if they are trying to protect the people of their State or the people of the country from some violation of their constitutional rights.

I thank the Senator. He has been very respectful toward me. I hope I am just as respectful toward him. If he wants to say anything now, he has the floor.

Mr. FRIST. Mr. President, I thank my distinguished colleague from West Virginia. Citing headlines, I guess to score political points, is useful. But I think the headlines you cite, without citing the headlines I cited—I had eight or nine that basically say Democrats are threatening filibuster, at least to our colleagues or to the American people. I think we have clarified that, where Democrats—and I named six Senators on your side of the aisle who are talking about filibuster. So we cleared that up. I appreciate my distinguished colleague saying that while I was on the floor so we can clear that up, the other side of the aisle having used filibusters in the past, having in an unprecedented way or at least talking about the filibuster out there.

I also appreciate, secondly, the respect my distinguished colleague from West Virginia has on freedom of speech, which I share. You can start with the Alito nomination, which is the real thrust, the real crux of what

we are talking about, this outstanding individual, and you could move to talking about the filibuster, which I certainly didn't start talking about but Democrats started talking about. Then you could move to what my response would likely be, and that is saying filibusters—I thought we had been through that. We said unless it is an extraordinary circumstance, filibusters are off the table. Yet you still hear about it. Then you move to, Well, if they do filibuster, Senator FRIST, what are you likely to do? Then you can move off to freedom of speech. I think that was a useful discussion and conversation, but let's come back to what we are talking about.

We ended pretty much saying that my distinguished colleague from West Virginia doesn't expect a filibuster, that he is not going to participate in a filibuster. I don't expect a filibuster.

With the hearings starting on the 9th, with time on the floor, full hearings—and we have waited until after the Christmas holidays so people can actually be studying papers and all the 3,000 cases and 300 opinions—we are giving plenty of time for the process to work. So we don't expect a filibuster. I think we can hypothetically go across all of these potential happenings and occurrences. But all that does come back to the fact, and it centers on the Alito nomination, there is no reason for a filibuster, I don't believe. I believe my Democratic colleague doesn't believe that.

Clearly, there is no reason at this juncture. A lot of the attacks, which are coming from the political left and the extreme left, are part of sort of a spaghetti strategy of throwing spaghetti against the wall and hoping something will stick and maybe that will precipitate votes against Alito for that reason. I don't think they are going to stick. A lot of the criticism we are hearing about Judge Alito today, or the critiques, you really just didn't hear over his 15 years on the bench or in these 3,500 cases. I think all of the attacks we hear on Alito himself are simply not working. The nomination is right on track. The leadership worked together with the Judiciary Committee in terms of setting a time line that we are right on track to fulfill.

A lot of people are trying to say Alito is extreme, and those attacks simply are not sticking because he is not extreme. He is not an ideologue. He did not prejudge cases that came before him. As I was reading this weekend, I came across one of Alito's former law clerks who said this week—and he happens to be a registered Democrat; he still has the "Kerry For President" bumper sticker on the back of his car—he said: Until I read his 1985 Reagan job application, I could not tell you what his politics were. When we worked on cases, we reached the same result about 95 percent of the time. It was my experience that Judge Alito was and is capable of setting aside any personal biases he may have when he judges.

Mr. BYRD. I believe that.

Mr. FRIST. The final words: He is the consummate professional.

I think all these attacks that are going on, since that really is the issue at hand, we need to put aside all of these partisan attacks, all of these unfair attacks by either extremist groups or Senators, and let's look at his qualifications. Let's go through the hearing process. Let's come to the floor, let's have an orderly debate, and then let's, at the end of all of that, not deny people, not deny our colleagues, the opportunity, the right to be able to vote yes or no after we go through that process.

Mr. BYRD. Will the Senator yield?

Mr. FRIST. I am happy to yield.

Mr. BYRD. I see nothing in the Constitution that requires an up-or-down vote on any nominee. The Constitution just says that the Senate shall have the power, and the Senate uses that power. It is in the Constitution.

Mr. FRIST. And my response would simply be that the Constitution says advice and consent.

Mr. BYRD. Yes.

Mr. FRIST. And I think advice and consent for somebody who has gone through the nomination process, the recommendations, through the Judiciary Committee, hearings, recommended to this floor, I would argue, not written in the Constitution, but under advice and consent, you can't vote with your hands in your pocket. You can't say yes or no.

Mr. BYRD. The Constitution doesn't say that.

Mr. FRIST. I would argue that the dignity of this institution has worked for 214 years. So why deny it? Especially why deny it with a qualified nominee like Alito.

Mr. BYRD. Will the Senator yield?

Mr. FRIST. I would be happy to.

Mr. BYRD. All this business about us working for 214 years, there have been a lot of misquotations of history when people talk like that. I say that a Senator has a right under the Constitution to object for whatever reasons—they may not be plausible reasons—to object to any nominee he wishes. The Constitution says the Senate has the power of advice and consent. So it doesn't say how that consent will be measured. It doesn't say it has to be an up-or-down vote. Nothing in the history, nothing in the Constitution says that. If you can point that out in the Constitution to me, where it says that a nominee shall have the right to an up-or-down vote—can the Senator point that out in the Constitution to me? Can the Senator point that out in the Constitution to me?

Mr. FRIST. Mr. President, if the distinguished Senator from West Virginia would let me answer, I would be happy to.

Mr. BYRD. Yes.

Mr. FRIST. It is not in the Constitution that a Senator specifically has the right for an up-or-down vote. I am saying the dignity of the institution to give advice and consent deserves an up-

or-down vote on the floor of the Senate. What the Constitution does say—which is why it is called the constitutional option, not because it is written in the Constitution—is that this body makes its own rules. The constitutional option is basically just that. You take it to this body and you say: Do these Senators deserve an up-or-down vote on the floor of the U.S. Senate? Let's vote on that.

Mr. BYRD. No.

Mr. FRIST. That is what the constitutional option is.

Mr. BYRD. He doesn't have a right to an up-or-down vote. A nominee doesn't have a right to an up-or-down vote.

Mr. FRIST. That is where we disagree.

Mr. BYRD. The Senator can't find that in writing anywhere in the Constitution. I can vote against a nominee just because, any Senator can vote against a nominee just because—

Mr. FRIST. But you get a vote.

Mr. BYRD. The nominee doesn't part his hair on the right or left side. The Senator doesn't have to explain why he votes against. That is his right.

Mr. FRIST. But he voted, and that is the point.

Mr. BYRD. May or may not vote. The Constitution doesn't require that, and the Senator can't find it in the Constitution. He can say all he wants.

Mr. FRIST. Mr. President, it doesn't say in the Constitution that you can vote; it says you can give advice and consent and that the Senate makes the rules as to whether you vote or not. We just disagree. Obviously, this goes back to the whole filibuster argument for judicial nominees. I simply believe in the principle that once someone comes to the floor, they deserve, in order to give advice and consent, an up-or-down vote.

Mr. McCONNELL. Will the majority leader yield?

Mr. FRIST. I am happy to yield.

Mr. BYRD. Will the leader yield to me?

Mr. FRIST. Let me yield to my distinguished colleague, and then I will be happy to yield to the Senator from West Virginia.

Mr. BYRD. I will be glad to take on both Senators in defense of the Constitution.

Mr. McCONNELL. Did the majority leader yield to me?

Mr. FRIST. Yes.

Mr. McCONNELL. Mr. President, I have listened with great interest to the exchange on the television monitor back in my office and thought I might come down and join you both.

Let me suggest that it could be argued that you are both right. What I believe, I say to my good friend from West Virginia, the majority leader is talking about is what is precedent in the Senate. There is a lot of discussion about "stare decisis." Lawyers use that term to refer to respect for the precedent.

Mr. BYRD. Yes, let the decision stand.

Mr. McCONNELL. The precedent in the Senate for 214 years prior to the

last Congress was the judges who came to the floor got an up-or-down vote.

Mr. BYRD. I am not sure about that.

Mr. MCCONNELL. Is that not the case, I ask the majority leader—

Mr. BYRD. I am not sure about that history.

Mr. MCCONNELL. —that when nominees came to the floor who enjoyed majority support in the Senate, they got an up-or-down vote? Has that not been what the leader argues for? And to the substantial credit of our friend from West Virginia, this whole controversy was largely defused last summer, was it not?

Mr. BYRD. Yes.

Mr. MCCONNELL. We have not been filibustering judges during this first session of Congress, and we have been giving judges an up-or-down vote as a direct result of the Senate's collective decision to sort of step back from the brink and honor the traditions of the Senate. Has that not been the case, I ask my friend, the majority leader?

Mr. FRIST. Mr. President, that is my understanding. This is exactly where we were about a year ago, after this long period of 214—or 218 years, as my colleague from West Virginia was saying on the side. When we are talking about filibustering—this is important to say for the people watching, not so much for colleagues—it is a very important tool for this body to use, for the minority to use, and it has been used really all the time for legislative issues.

As we design legislation, which can be shaped, manipulated, defeated, and approved, these nominees who come from the executive branch, the President, are different. Ultimately, you cannot cut a person in half. You can operate on them, but you cannot cut them in half. You cannot move them aside. Ultimately, the only way to give that advice and consent—and the way it has been done for those 218 years—is that once they come to the floor, having gone through committee, they get the courtesy, the dignity, consistent with the principles of this body, of an up-or-down vote.

Mr. BYRD. That is not history. That is not even recent history.

Mr. FRIST. And then it changed about 3 years ago, where for all of this period of time, it didn't occur; that is, a nominee who had majority support being denied a vote on the floor of the Senate. Then it happened 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 times, all in a period of about 18 months.

Then progress was made. We kind of put that all back in its cage. It still can be brought out. That is where some of these threatening issues are coming from. We don't think it should be brought out. Let's give the nominee an up-or-down vote after we have had plenty of time to debate and talk about and discuss that process.

That is my understanding of the history. I know we will get a different version here shortly, but that is the lay of the land in the past and where we

are today. I want to keep coming back to the Alito nomination. That is ultimately where the decision will be made.

I yield the floor.

Mr. BYRD. I thank the majority leader. I hope my PA system is on here. This country is a great country, but it has never perfected a good PA system. I think this one is working.

May I say to the distinguished Senator, on vote No. 37, 106th Congress, on the nomination of Richard A. Paez to be U.S. circuit judge, vote on cloture on March 8, 2000, the distinguished Senator from Tennessee, Mr. FRIST, voted to filibuster. The question was on a cloture motion to end a filibuster. Cloture was agreed to by three-fifths vote, but the distinguished Senator from Tennessee chose to exercise his right, and he voted against cloture. He voted to filibuster. So the worm turns. The day may come when the Senator may want to filibuster. He will never find me on the side of saying I will cut off your right to talk.

Mr. FRIST. Mr. President, I will not reclaim the floor. But what happened to those judges? Not with my principle as an up-or-down vote, but I ask my distinguished colleague what happened. Ultimately, they got an up-or-down vote on the floor of the Senate. That is all this discussion is about.

Mr. BYRD. Some of them did.

Mr. FRIST. The Senator cited Paez. He got an up-or-down vote on the floor of the Senate. All I am arguing for is an up-or-down vote. It is simple. Vote for or against them, and they win or they lose, and you start over or not.

Mr. BYRD. That has never been the rule here. Senators have a right to talk, to filibuster.

Mr. MCCONNELL. Will the majority leader yield?

Mr. FRIST. Yes.

Mr. BYRD. The distinguished Senator from Tennessee, may I say, is wrong when he cites history. History is not on his side. I tell you something else. Not all nominees have had up-or-down votes. A lot of them are bottled up in committees. That is one way of killing them. That is one way of denying them their right, as the Senator says, to an up-or-down vote. They are killed in committees. The Senator is a member of the Republican Party, the Grand Old Party, and I respect that party. I am for a two-party system. But I will tell you, the Senator doesn't come into court with clean hands when he talks about the right of an individual to have an up-or-down vote. The Republicans have killed lots of nominees in committees, not letting them have an up-or-down vote. At least 61 nominees did not get out of committee. Not all nominees have had up-or-down votes.

Mr. FRIST. Mr. President, I yield to my colleague from Kentucky.

Mr. MCCONNELL. Mr. President, would the majority leader not agree with the Senator from Kentucky that the Paez and Berzon nominations to

which our good friend from West Virginia refers—in both instances, you were not the leader at the time; you were a Member but not the leader. The majority leader and the leader of the other side jointly filed cloture, not for the purpose of defeating the nomination but for the purpose of guaranteeing that the nominees got an up-or-down vote.

There were one or more Senators, I expect, on our side of the aisle who did not want those nominees to get an up-or-down vote. So in that particular instance, Senator Daschle and Senator LOTT used the device of cloture, not to kill the nomination but to advance the nomination, move it to final passage.

I say to my friend, the majority leader, it is largely irrelevant how he may have voted on cloture as a rank-and-file member of the Republican Conference on that particular day. The leader of our party at the time and the other party at the time were honoring the principle to which the leader has been speaking, guaranteeing that those nominees got an up-or-down vote by the only device they could, by filing cloture and moving forward.

So that is entirely consistent with the point my good friend, the majority leader, has been making here on floor, and the end result was that those two nominees—very controversial on this side—ended up getting an up-or-down vote and being confirmed by the Senate, and they are now called Judge Paez and Judge Berzon.

Mr. FRIST. Mr. President, I am going to close by saying I very much appreciate the colloquy, the back and forth we have had over the last hour. These are important issues when you are talking about nominations for the Supreme Court, which will far outlast, once confirmed, many of us in this body, and the importance of this process. I believe what is important for the American people to understand, even in this back and forth now, is we are committed to a fair process and a process that should be dignified; that we need to have civil debate, and we will have that on this particular nomination, which is where the focus is, where I want to rest so we are not talking about what we will do from that side or this side, but focus on the fact that among all the responsibilities that we have, that we are given in the Constitution, this nomination process is one that is important, that should be dignified, especially if we want people to continue putting themselves forward as potential nominees. We should not be in the business of character assassination, and we should not be in the business of not giving people the opportunity to fulfill a process and have it unfairly blocked as we go forward.

I think it is important—again, not as Democrats or Republicans or party or partisan issues—to not allow the debate to get so hot, high, and heated that we interrupt the process. We are about midway through the time Judge Alito has been nominated. I am very

pleased by our leadership at the Judiciary level, with Senator LEAHY, Senator SPECTER, and the committee, in terms of their approach. They have a tremendous working relationship, which is very important as we go through these hearings which will begin on the 9th.

Those hearings will be several days. They will be thorough; they will be exhaustive. It is important to this body to have the information to know how to vote—not whether to vote but how to vote, and questions, I am sure, will arise from the hearings—and that we be able to have both the appropriate amount of time for discussion and then come to the floor and have a full debate, and then approve or disapprove of that nomination.

Again, I appreciate the chance to have this discussion. I know the distinguished Senator from Massachusetts has been waiting an hour to speak. We will continue the dialog. I very much respect the comments of my distinguished colleague from West Virginia. He teaches me all the time. I listen, and he knows I listen as we go through. We disagree on certain principles. I know one is not freedom of speech, or respect for the Constitution, or respect for this institution.

I yield the floor.

Mr. BYRD. Mr. President, the Senator has yielded the floor. Let me say, as the Chair recognizes me, to the distinguished Senator, I say again, I respect him, but I hope he will never leave as part of his legacy the destruction of freedom of speech in the U.S. Senate. And may I say to him once finally, that if he ever tries to exercise that so-called constitutional option, which is an unconstitutional option, he flies in the face of history, he flies in the face of our forefathers, he flies in the face of the Constitution, the right to freedom of speech. If he ever tries that, he is going to see a real filibuster if I am living and able to stand on my feet or sit in my seat.

I respect him as a Senator, but I respect the Senate even more. I respect freedom of speech even more. And if the Senator wants a fight, let him try it. I am 88 years old, but I can still fight, and fight I will for freedom of speech, for the constitutional right of freedom of speech. I haven't been here 47 years to see that freedom of speech whittled away and undermined. I haven't been here that long, I haven't been here 47 years to see that.

I hope the Senator will take what I say as being in the spirit of friendship. But with something so important—and it was here a long time before I came here. It is the Constitution of the United States and freedom of speech, and we are going to have freedom of speech here.

If I elect to filibuster against a nominee, it will be for good reason. I don't intend to join a filibuster. That is why I joined the group of 13, and I made the 14th. I think we avoided a filibuster. I don't expect to filibuster on this.

I tell you one thing, I am tired of hearing this threat thrown in our faces

that this so-called nuclear option will be used if we decide we want to filibuster. If there is good reason to filibuster an individual, why, let a Senator filibuster him. There are some of the names around, and I hope the President will not send one of them up, but there are some around on which there will be a filibuster. I compliment the President on avoiding that. We don't need that kind of disruption here. We don't need that kind of divisiveness. We need togetherness. I hope we will have togetherness.

I thank the Senator for his courtesies. I respect him. I respect him, but I tell you, I expect, if the Lord lets me live, to continue to fight for this Constitution and for this institution and for freedom of speech against all comers on either side of the aisle—either side. I would not stand still a minute if a Democratic leader over here threatened to kill freedom of speech in the Senate. I wouldn't stand still for that. No, no, I wouldn't do that, Democrat or Republican.

I thank the Senator. I respect him. When I meet him in the corridors, I will meet him with a smile.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. FRIST. Mr. President, once again I thank my distinguished colleague from West Virginia for his insightful comments. I do want to keep the focus at this point—I have a feeling he is going to want to say something after I close, but I think it is time to put partisanship aside.

Mr. BYRD. Yes. Amen.

Mr. FRIST. To put threats of filibuster aside before we have even had the hearings. I am not bringing up filibuster.

Mr. BYRD. That is freedom of speech.

Mr. FRIST. I didn't bring it up yesterday. I responded to a question, and then I did cite what six Democratic Senators have said and what eight newspapers have said about what is coming from the other side. But I think it is time to put it aside and to focus on the nomination. Freedom of speech, which is important, which I love, I cherish, that is why I am here, we can debate that. I am not sure what we are debating. We can debate that. I thought we finished that. We talked about filibusters 6 months ago. It is time to focus on this nomination, which is what the American people want us to do.

We are talking about one of the most fundamental responsibilities in this body, and that is looking at an individual—and I would argue a very qualified individual—having a process that is fair, that is dignified, that is respectful and gives people the opportunity to give advice and consent. That is my goal, and that is what I am going to do my best to achieve.

I think that is going to be the last thing I say. But I thank the Senator very much. I appreciate the comments from the distinguished Senator.

Mr. BYRD. Mr. President, may I say to the majority leader, there are those

who filibuster sometimes, but they, too, can be dignified. I have seen filibusterers who were dignified. The late Senator Richard Russell and some of my friends on that side of the aisle when I came here filibustered with dignity. Talking about dignity, you can be against something and filibuster and still do it with dignity. I thank the Senator. I thank the Senator.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I know not many of our colleagues are here at this time, but I certainly hope a number of Americans have been listening to a very important history lesson and a real lesson about the rules and some fundamental issues and rights that have been debated over the last hour in the Senate. I think it has been enormously helpful and very informative.

I am a member of the Judiciary Committee. I have attended some 22 of these nominations. I have spent a good deal of time since the Senate went into recess in preparation for these hearings and will continue to do so. But I join with my friend and colleague from West Virginia in saying that I do not know a single member, certainly of the Judiciary Committee, who has said they are going to filibuster this nominee. Nor do I know a single member of this side of the aisle who has stated they were going to go ahead with a filibuster.

A number of our colleagues, including myself, have been asked, Does this mean under any circumstances you will not? The appropriate answer is, as the Senator from West Virginia stated so clearly and compellingly, we are not going to give up any of our rights prior to consideration of a nominee until there has been a completion of the hearings and until we make a balanced and informed judgment.

That is the responsibility we have because the Constitution has stated so. During the debates at the Constitutional Convention, our Founding Fathers considered on four different occasions who would have the right to nominate judges to the Supreme Court.

On three of the four they gave the complete power and authority to the Senate. It was only in the last 10 days of the Constitutional Convention they decided that it would be a shared power: One, the President would nominate and, second, we had a constitutional responsibility to give our judgment whether we believed that nominee was committed to constitutional rights and liberties. That is the responsibility we have, which is an enormously important one.

I do not think anyone could have listened to the debate in the last hour or so and not understood the strong feelings that not only the Senator from West Virginia but all of us have on this particular judgment. I do not think there is a decision outside of the issues

of war and peace that is more important than the votes we cast for a nominee to the Supreme Court of the United States.

The debate is closed, but as a member of the committee I do want to correct a few items. We can go back through, but the record is very clear that Republicans have filibustered Democratic nominees. I was here at the time of Judge Fortas. So they have filibustered Democratic nominees in the past and denied them the right of a vote.

As Senator BYRD has pointed out, I have been a member of the Judiciary Committee where President Clinton's nominees were effectively killed by denying them the opportunity to have a hearing. I have been in the Senate when we have had what they call secret holds and that is when Republicans put a hold on a nominee so that we do not even get a chance to consider the nominee.

All of that is history and we should not be bothering about debating it. We can go back and debate whether it is history or it is not, but as a member of the Judiciary Committee and one who has been participating in these various debates and discussions, the record is very clear. It has been exhibited on the floor of the Senate in recent times in the discussions of it.

So I want to join my colleague and friend from West Virginia. The last thing we need now is threats about the process and the procedure. What we need to have is an informed hearing on this nominee. As nice, decent, and fine a nominee as we might have, that in and of itself is not enough to promote this individual to the Supreme Court of the United States. Any nominee has to demonstrate his or her core commitment to constitutional values. Those are the most precious rights and liberties we have. The essence of the terms of the Constitution is to protect the rights and liberties of individuals, as has been pointed out by the Senator from West Virginia, from tyrannical governments, kings and monarchies. This is enormously important. We take our responsibilities extremely seriously.

Reference was made during the consideration of the 1985 memorandum that Judge Alito had written, and I am not going to spend a great deal of time this afternoon going through it, but there are troublesome aspects of statements he made when he was applying for a job in the Justice Department. He has pointed out that it was just applying for a job in the Justice Department. So when he said he was so critical of the Warren Court that made judgments and decisions that guaranteed the rights of counsel in the *Gideon v. Wainwright* case, also the one-man, one-vote case which has been so fundamental against the background and history of gerrymandering of voters in this country which has excluded the rights of people, on those two important decisions—or the rights of a de-

fendant in *Miranda*—when these decisions now are bedrock in terms of jurisprudence, we have to ask what was so troublesome to him in 1985 about those particular judgments and decisions?

He says he was just applying for a job. Well, he was 35 years old. Now he is applying for another job. So there are important issues and questions which we have every right to go into. As to the *Vanguard* case, Judge Alito mentioned he would recuse himself from any decisions on the *Vanguard* case. Then the case comes for a decision in his court and he does not recuse himself. Then he writes to the Judiciary Committee some time later—after he had been to the Judiciary Committee and gave the Judiciary Committee the assurance he would recuse himself, he decided himself he would no longer recuse himself. Is that not interesting? Who did he notify? Did he notify the Judiciary Committee he changed his mind? Did he notify the circuit court? The White House says the reason he did it was because of a computer glitch.

Then he says to the members of the Judiciary Committee that he did it because it was a pro se case, so it did not make much difference. Yet a pro se case is probably the most important. Those are cases which involve such individuals where they do not involve a whole battery of lawyers or law firms.

When he gives his word to the Senate Judiciary Committee and then changes his mind, is it not worth finding out something about this nominee?

So we are looking forward to this hearing. These hearings are enormously important. As one who has gone through the cases in which he has dissented—a good part of the cases he has been a part of the majority, a good part of the cases have not been published, they are nonpublished cases—I am certainly concerned about certain patterns that indicate a greater proclivity toward the powerful and less interest in protecting the smaller person, the little guy, on many of these cases. I am not prepared to make a judgment or decision on this.

This is an enormously important consideration, and I could not agree more with the Senator from West Virginia. Why do we need to divert focus and attention on the process and the procedure when there is not a single member in the Senate who has said they were going to filibuster? Why attempt to chill debate and discussion? The only effect of this kind of comment is basically to threaten or to chill debate and discussion about a nominee.

The Senator from West Virginia is not going to be intimidated, nor myself, but I do not think that serves the process well. It was entirely appropriate for the Senator from West Virginia to point out these comments that were on the front section of a newspaper, the *New York Times*, but wherever it was, wherever it was said, it was being said by the majority leader and

the message was very clear. I certainly received the message, although I did not accept it. I do not think I would have been as clear and as eloquent as the Senator from West Virginia, but the message was very clear, do not you dare take too much time in consideration of this nominee or I am going to change the rules of the Senate in ways that are going to deny free speech. That is not where we should be in terms of giving fairness to this nominee and to give him the kind of thoughtful hearing which the Judiciary Committee is capable of doing and which it did under Chairman SPECTER during the Roberts hearing.

I think Americans who followed that would feel the nominee was treated with respect and dignity and that members of the Judiciary Committee had opportunities to inquire and also to hear from other outside witnesses. That is the way it should go. I am confident that is the way it will go.

I agree with my friend and colleague from West Virginia, the less talk about the threats about changing the rules of the Senate and particularly by the leadership, the better off we are going to be.

Mr. BYRD. Would the distinguished Senator yield?

Mr. KENNEDY. I would be glad to yield.

Mr. BYRD. Mr. President, first, I apologize to the distinguished Senator for imposing on his patience. He sat back in that chair and he was in the Senate Chamber before I was today. He sat patiently through that long, drawn-out discussion, and I apologize to him for my part in imposing on his time and patience.

Secondly, let me thank him for his clear, lucid, reasonable, and thoughtful comments concerning the subject matter that has been discussed. He has always taken advantage of the opportunity to serve the people of the country, to serve the country, and to serve the Senate. If something seemed right or seemed wrong, he was willing to speak out. I will always admire him for those things. I thank him for what he has said today. I think, again, it reflects great dignity upon the Senator and his thoughtfulness. He is a Senator *sui generis*, in the fact that he speaks his mind—he is never backward about that. He can do that with me, too. And he has done that with me in the past. I respect him for it.

I thank the Senator for his comments. He certainly has engaged in a discussion today that I think makes a great contribution, not only to this discussion and this subject matter, but he continues as he has for years, so many years during my tenure here, to contribute greatly as a statesman who has been worthy of a seat in the Constitutional Convention or a seat in the first Senate calling that Congress. He could have been in any of those debates at any time in the history of this country.

I respect him for it. He is an outstanding Senator and one upon whose

services history will certainly report with great support. I thank him so much. I thank Senator KENNEDY very much.

Mr. KENNEDY. I thank my friend from West Virginia. That is what that previous hour was about, and why it was so important, because it was about preserving this institution. I know I speak for all of us, I think pretty generally across both sides of the aisle, in saying that there is no individual who is more dedicated to the preservation of this institution and the magnificent framework in which our Founding Fathers had conceived of it. It was really that issue that was talked about in that previous hour.

It is important, as all of us go through the process of pressing our own views and our own vision about the future of this country, that we hear the clear and persuasive and knowledgeable voice, the voice of history, that speaks about the institution and its importance to the American people. That is what we just heard with the exchange of the Senator from West Virginia. That is why I was so pleased to have an opportunity to listen. I just wish the other 98 Senators had that opportunity to be so informed as well. I thank the Senator for his kind words.

Mr. BYRD. I thank the Senator again. I feel pretty well today. I have had the flu over the weekend, but I am glad I came to the Senate today.

Mr. KENNEDY. I think you got your message across pretty well.

Mr. BYRD. I thank the Senator and I thank all Senators.

Mr. KENNEDY. I thank Senator BYRD.

Mr. President, I know we are in the morning hour of business; am I correct? I would like to be able to speak continuously. Do we have a time limit? I would like to be able to speak until I conclude.

The PRESIDING OFFICER. There is no limitation.

PENSIONS, RECONCILIATION AND EDUCATION FUNDING

Mr. KENNEDY. Mr. President, as Congress meets for a final session before we adjourn for the holidays, we should be focused on the true meaning of Christmas and the special thoughts that Americans of many faiths have at this time of year regarding their families, their friends and neighbors, and the rest of humanity.

Christmas is a season of great hope—a time of goodwill and special caring for others. That's what we should remember as we celebrate the birth of Christ, and the glad tidings of great joy that came to us that day.

There are those in America who urge the return of the word "Christmas" to this holiday season. I believe that Christmas is more than a word. It is a belief in a power far greater than ourselves. It is a belief in the possibility of lives full of hope and fulfillment. It is a belief that each of us has a sacred ob-

ligation to care for one another and to help those in need—to lend a hand to the least of those in our midst.

But I am sad to report, that is not what we are seeing in Congress this week.

As families across America struggle to make ends meet with higher health costs, higher college costs, higher gas prices, higher heating costs, and higher housing costs, Congress is about to make things worse for them.

Millionaires will be given tens of thousands of dollars in new tax breaks, but Medicaid cuts could mean that 22 million poor Americans will face a reduction in help from that lifesaving program and two million others may lose their health care entirely.

Proposed budget cuts would mean that 750,000 poor preschoolers who are eligible for Head Start won't be able to get into the program.

More than a quarter of a million poor Americans could lose their food stamps, and could face hunger. These cuts are proposed just as the Department of Agriculture reports that 38 million Americans face hunger, an increase of 5 million in 5 years.

Hundreds of thousands of children could lose their child support because of Republican proposals to cut enforcement against delinquent fathers.

Three million poor children could be left behind in school. They won't get the quality teachers and after-school help and supplemental services they need to catch up and succeed.

Hundreds of thousands of airline workers—the ones who are helping us get home for the holidays—could see their pensions hanging in the balance, and millions of other Americans could lose their pensions, too.

That is what is at stake in Congress this Christmas. Are these actions consistent with the spirit of this holiday season? Rather than debate whether the word "Christmas" should appear in our stores and on our greeting cards, shouldn't we be living out the hope that came from the first Christmas and do more for our fellow citizens than greater tax breaks for the rich and greater hardship for the poor and struggling middle class?

As Christian leader Reverend Jim Wallis said last week:

The Bible does not condemn prosperity. It just insists that it be shared.

So I would hope that those in Congress who seek to lavish more tax breaks on the privileged few at the expense of the rest of America will reconsider—not only at Christmas, but throughout the year.

Otherwise, what we face this week is a Republican plan in which billions of dollars will go from programs that assist low income families and senior citizens into the pockets of the already wealthy.

The provisions in the House bill that would cut the tax rate on capital gains and dividend income are particularly unfair, because more than 86 percent of the tax benefits will go to taxpayers

with incomes above \$100,000 a year. Nearly half the benefits—45 percent—will go to taxpayers with incomes over \$1 million a year. The average millionaire will save \$32,000 a year from these tax breaks for capital gains and dividends. In stark contrast, families with incomes less than \$100,000 would receive an average tax cut of only \$29.

This is by no means the only outrageous provision in the Republican plan—just the most costly. There are others. Republicans in the House propose a \$5 billion tax break for financial services companies doing business in foreign countries. This provision actually creates a tax incentive for these huge corporations to invest abroad instead of in the United States.

The spirit of Christmas should compel us to take another path. We should start investing in the health and well-being of all families. The average family is being squeezed unmercifully by stagnant wages and ever-increasing costs for the basic necessities of life. The cost of health insurance has risen 59 percent in the last five years. Gasoline is up 74 percent. College tuition is up 46 percent. Housing is up 44 percent. The list goes on and on, up and up—and paychecks are buying less each year.

The economic trends are very disturbing for any who are willing to look at them objectively. The gap between rich and poor has been widening in recent years. Mr. President, 37 million Americans now live in poverty, up 19 percent during the Bush Administration. One in six American children lives in poverty and 14 million children go to bed hungry each night. Long-term unemployment is at historic highs.

The silent slavery of poverty is not so silent anymore. Katrina focused the Nation's attention on the immense hardships that low-income Americans face each day, and presented us with an historic and challenging opportunity to find better ways to lift up the most vulnerable among us.

This is Christmas. Surely, the American people deserve better.

In the Senate, we did our best to respond to the needs of average Americans by helping to expand access to a college education. We cut the fat out of bank profits and put it back where it belongs—helping students afford the cost of college. Our bill included a virtually unprecedented increase in need-based aid—over \$8.25 billion over 5 years.

All together, it provides \$12 billion in new aid and additional benefits for needy children who have the ability to go to schools and colleges all across this country—bipartisan, unanimous, out of our committee and on the floor of the Senate, all in jeopardy this afternoon. Hopefully, our good chairman, Chairman ENZI, will be able to fight for those provisions. But that is now in jeopardy from those who believe that tax breaks are more important than our children's future. Americans know that education is the great equalizer. When young people work hard,